

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: FEBRUARY 15, 2006

Division: TDC

Bulk Item: Yes X No

Department:

Staff Contact Person: Maxine Pacini

AGENDA ITEM WORDING:

Approval to advertise a Request for Applications (RFA) for the FY 2007 Bricks and Mortar/Capital Projects Grant.

ITEM BACKGROUND:

Copy of application is attached. TDC approved same at their meeting of January 17, 2006.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

New Request for Applications

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$

BUDGETED: Yes X No

COST TO COUNTY: \$

SOURCE OF FUNDS: TDC

REVENUE PRODUCING: Yes X No AMOUNT PER MONTH Year

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:

(Lynda Stuart)

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

**APPLICATION FOR BRICKS AND
MORTAR/CAPITAL PROJECTS GRANT**

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NOTICE

This Request for Bid Application is subject to change prior to its issuance should there be a change in policy by the Board of County Commissioners or the TDC.

NOTICE OF CALLING FOR BIDS/APPLICATIONS

NOTICE IS HEREBY GIVEN TO PROSPECTIVE BIDDERS/APPLICANTS that on July 6, 2006 The Monroe County Purchasing Office will receive sealed bids applications until 5:00 p.m for the following:

BRICKS AND MORTAR/CAPITAL PROJECTS

The following is a list of district boundaries in which funds will be allocated:

Key West - (shall encompass the City Limits of Key West)

Lower Keys - (city Limits of Key West to West end of Seven Mile Bridge)

Marathon – (west end of Seven Mile Bridge to Long Key Bridge)

Islamorada - (between Long Key Bridge and mile marker 90.7)

Key Largo - (from mile marker 90.7 to the Dade/Monroe County line and any portions of mainland Monroe County)

The respective districts wish to solicit bids applications for consideration within the parameters for such expenditures as outlined in F.S. 125.0104 - paragraph (5) (a) 1. thru 4. - Tourist Development Tax.

Specifications and Bid Documents may be requested from DemandStar by Onvia by calling 1-800-711-1712 or by going to the website at Hyperlink <http://www.demandstar.com>. Questions regarding the Bid application should be directed to the Administrative Office of the Tourist Development Council, (305) 296-1552. Any addenda to this Request for Applications (RFA) shall be distributed to vendors on the list of Demandstar distributees for this RFA.

All applications must be received by the Monroe County Purchasing Office on or before 5:00 p.m on July 6, 2006. No waivers shall be allowed for applications which have not been submitted to the County Purchasing Department by the close of business on the deadline date.

Applicants must submit two (2) signed originals and thirteen (13) complete copies of each application in a sealed envelope clearly marked on the outside: "Sealed Application for Bricks and Mortar/Capital Projects Grant Funding", addressed and delivered to:

Purchasing Office, 1100 Simonton Street, Room 2-213, Key West, Florida 33040

The Board will automatically reject the application of any person or affiliate who appears on the convicted vendor list prepared by the Department of General Services, State of Florida, under Section 287.133(3)(d), F.S. (1997).

Contract award will be by the Monroe County Board of County Commissioners to those applicants whose applications are/is deemed by the BOCC, upon recommendation of the Monroe County Tourist Development Council, to be in the best interest of Monroe County.

Dated at Key West, Florida, this _____ day of _____, 2006.

CAPITAL PROJECTS
MONROE COUNTY TOURIST DEVELOPMENT COUNCIL (TDC) THIRD PENNY

Permissible Uses of Funds

All Capital projects funded by TDC shall be owned and operated by either a governmental entity or non-profit organization.

Tourist Development capital project funds may be used in Monroe County as follows:

1. To acquire, construct, extend, enlarge, remodel, repair, or improve one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the taxing district in which the tax is levied.
2. To finance beach improvement, maintenance, re-nourishment, restoration, and erosion control. To acquire, construct, extend, enlarge, remodel, repair, improve, or promote one or more museums, zoological parks, fishing piers or nature centers.

****Please note that part 1, Item 12 (page 10) and part VII, Item 6 (page 27) require the Grantee to provide for maintenance.**

The following information must be provided:

- Demonstration of the need for project
- Specific benefits to Monroe County tourism
- What percentage of the total funds required for the project are being sought through the Tourist Development Council
- Description, clearly defining the portion for which TDC funds are being requested, of land, improvements, and specifics of project
- Specific history of project
- Impact to the area
- Evidence of community support, including firm commitments of matching funds
- Capital expenditure budget for the project
- Annual operating budget upon completion, including maintenance and repairs
- A budget based on estimated expenditures for related expenses shall be provided.

Applying for Funds:

1. **Sealed applications will be submitted to the Office of Purchasing, 1100 Simonton Street, Room 2-213, Key West, Florida 33040, on or before 5:00 p.m. on July 6, 2006.**
2. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a grant application or a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO (\$3,000.00) for a period of 36 months from the date of being placed on the convicted vendor list.
3. All applicants must submit two (2) signed originals and thirteen (13) complete copies of each application in a sealed envelope marked on the outside "Bricks & Mortar/Capital Projects Grant Funding". Further information may be obtained by contacting the Administrative Office of the Tourist Development Council, (305) 296-1552.
4. The Monroe County Board of County Commissioners (BOCC) reserves the right to reject any or all applications as deemed in the best interest of Monroe County or waive any informality in any application and may choose to re-advertise. The Monroe County Tourist Development Council (TDC), may, as an advisory body, make recommendations to the BOCC for acceptance or rejection of any and all applications.
5. Contract award will be by the Monroe County Board of County Commissioners to the entity/entities whose application is/are deemed by the BOCC, upon recommendation of the Monroe County Tourist Development Council, to be in the best interest of Monroe County.
6. A member of your organization must be present to answer questions at the District Advisory Committee and Monroe County Tourist Development Council meetings when the application is considered.
7. No application can be brought before the full TDC until it has been approved by the District Advisory Committee in the district from which the funds will be utilized.

8. The Monroe County Board of County Commissioners and the Monroe County Tourist Development Council accept no responsibility for any expense incurred in the application, preparation and presentation, such expenses to be borne exclusively by the applicants.

9. Schedule:

(Contact Administrative Office, (305) 296-1552 for updated information)
(TDC/DAC Workshops/Review/Evaluation meeting dates subject to change)

Issue of Request for Application	April 24, 2006
Workshop	June 6/7, 2006
Application Deadline	July 6, 2006
DAC Review/Evaluation of Applications	August 1/2, 2006
TDC Review/Evaluation of Applications	August 22, 2006
BOCC Approval	After October 2006

***** Be advised that if your organization is awarded funding you will have to enter into a contract which requires you to maintain accurate and complete documentation of the project. You will be required to obtain a signed amendment to the contract before making any substantive changes to the project or you may nullify the County's obligation to pay. You will be required to comply with the following:*****

a) TDC funds only a portion of the cost of the project and makes payment using the percentage of completion payment process. All submissions for payment shall have a proposed schedule of values for phases and indicate the percentage of completion of the overall project as of the submission. This document should be signed by the project architect, engineer, general contractor or project manager. Photos of the progress of the work shall also be submitted with the payment application. Payment shall be made upon the completion of a specific phase/segment as outlined in the Scope of Services. When the project requires a county and/or municipal building permit(s), it shall be the responsibility of the project architect, engineer, general contractor or project manager to initiate the communication with the Monroe County Engineering Division to facilitate the inspection of the project (or specific phase/segment) and obtain the signature of a Monroe County Engineering Division as to the completion of said phase/segment at which time the documentation shall be submitted for payment. Payments shall be a 50% reimbursement of the total cost of each segment of the project, subject to the cap on expenditures for that segment as set forth within the agreement.

b) Payments shall be made upon completion of said phase/segment/project provided that AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing contractor's signed certificate is attached to an invoice with the documentation required below and signed by a Monroe County Engineering Division. Documentation shall include proof of application of matching funds and/or in-kind services valued at an amount not less than the amount of payment being sought. (This matching and payment request shall be applied on a cumulative basis, so that, for example, if Pay Application 1 shows \$25,000 in matching for total expenditures of \$52,000, allowing payment of only \$25,000, the

remaining \$2,000 in expenditures would be considered for 50% payment in the next payment application.) Copies of cancelled checks must be attached to the reimbursement request.

c) All payment requests must be submitted no later than 60 days after the completion of project. Documentation shall be submitted to the TDC Administrative Office to show the receipt and application of in-kind donations of goods, professional services, and materials. Said documentation should include invoices, bills of lading, cancelled checks, etc., and be verified as received and applied to the project through a notarized statement of the project architect, engineer, general contractor or project manager. The final payment request will also require the following:

AIA Document	G-702	Application for Payment Summary
AIA Document	G-704	Certificate of Substantial Completion
AIA Document	G-706	Contractor's Affidavit of Debts & Claims
AIA Document	G-706A	Contractor's Affidavit of Release of Liens
AIA Document	G-707	Consent of Surety to Final Payment
Final Release of Lien		
Affidavit and Partial Release of Lien		

The receipt and application to the project of volunteer labor are to be documented and verified by notarized signature of the project architect, engineer, general contractor or project manager, and said documentation submitted to the TDC Administrative Office. **Any applicant who intends to utilize volunteer labor or in-kind donations of property shall provide in the application a schedule of values for each unit of in-kind services and/or goods (property). Should a contract be awarded, BOCC, TDC reserve the right to deny the application of certain in-kind services and goods for match purposes and to negotiate a revised schedule of values for permissible items. For example, County will not accept as in-kind match the waiver of permit fees.**

d) A conservation easement may be required as a condition of funding.

e) The recipient of TDC capital project funding shall designate a project manager if no licensed architect, engineer or general contractor is involved in the project. If the project is performed by County or City personnel, the project manager shall be the Engineer, Building Official or Construction Manager of that local government.

If you have any further questions, please call the Administrative Office at 305-296-1552.

PART I:

General Conditions of Application and Agreement:

1. Please read these instructions carefully before completing the attached application. Make certain that you provide responses to all applicable questions and that the entire application, all required copies and supporting materials are returned to the address indicated on page 4.
2. Do not return the instructions with your application submission.
3. Applications must be submitted on the forms provided. Do not modify or use an adaptation of this form.
4. Answers should be typed and confined to the spaces provided on the form.
5. Sealed application shall be submitted as follows:

Two (2) originals and thirteen (13) copies of the completed application forms and supporting documents shall be delivered to the Director of Purchasing, 1100 Simonton Street, Room 2-213, Key West, Florida 33040, no later than 5:00 p.m. on July 6, 2006.

6. **Reservations:** The TDC/County reserves the right:
 - a) to reject any and all applications;
 - b) to waive irregularities and informalities in any and all applications;
 - c) to re-advertise for applications;
 - d) to separately accept or reject any item or items of a application; and
 - e) to award and/or negotiate a contract in the best interest of the TDC/County.
7. Attachments must be confined to those listed in the Attachments & Certifications checklist on page 30 of the Application. They should be labeled as indicated in the Checklist (i.e., Attachment A, Attachment B, etc.) and must be submitted in the number of copies required.
8. If architectural planning is in progress, submit such drawings and outline specifications as may be available to describe the proposed work as completely as possible

9. Note that individuals and for-profit organizations **are not eligible** to apply for Capital Projects funds.

10. Affidavits and Application Document:

- a) All applications shall be complete and submitted on the attached document with required number of copies. Any additional information, deviation from requirements, etc., shall be submitted in the form of attachments thereto.
- b) The application and affidavit(s) signature pages must be signed by an authorized person. If application is submitted on behalf of any corporation, it must be signed in the name of the corporation by any authorized officer as agent thereof. If practicable, the seal of the corporation shall be applied. If any officer other than the president signs, proof of that officer's authority to sign contracts for the corporate entity must be provided.
- c) Failure to comply with any of the submission requirements shall be cause for rejection of application.

11. Indemnification and Hold Harmless:

A successful applicant will be required to sign an agreement which includes provisions whereby:

(1) the applicant covenants to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims which arise out of, in connection with, or by reason of the services provided, event sponsored, or other activities and funding associated with this agreement; and

(2) the applicant shall obtain from all contractors and subcontractors that will be utilized in the completion of the Capital Project, original Certificates of Insurance indicating Monroe County BOCC as certificate holder and additional insured. Insurance coverage's that may be required are Workers Compensation/Employers Liability, General Liability, Vehicle Liability, Professional Liability or others in amounts as determined by Monroe County Risk Management and dependent upon contemplated Capital Project. Final insurance requirements will be determined by Monroe County Risk Management in conjunction with the award of each Capital Project funding grant contract.

12. Maintenance:

The applicant shall be responsible for all maintenance and operational costs of the premises improved or constructed with the use of funding from the TDC/County. The Applicant shall be responsible to the TDC/County for the safekeeping and proper use of the property entrusted to Applicant's care, to include any and all insurance for the value of the equipment and any maintenance or service contracts relating to such equipment for its service life.

Any disposal of assets procured through funding under this agreement shall comply with chapter 274, F.S. or chapter 617, F.S., dependent upon the type of entity funded under this agreement.

13. Permits:

Applicant shall be responsible for securing all federal, state and local development approval and permits necessary to complete the project. Award of funds under this application do not indicate any development approval by the County and applicant shall be required to comply with all County concurrence requirements under Land Use laws of the County and State.

14. Taxes:

The TDC/County is exempt from Federal, Excise and State of Florida Sales Tax.

15. Performance Guarantee:

A successful applicant shall warrant, by signing this application, that applicant has the financial capability of completing the project as planned without the need to request further funding from TDC/County for same.

Applicant shall warrant by signing this application and confirmed in writing that applicant has the matching hard dollars in place at the time of the application for grant funds, requiring that a governmental applicant provide a line item budget for the project in question, and proof that the budget has been adopted by the governing board of that entity; also requiring that a non-profit applicant provide one or more of the following: 1) documentation provided by a financial institution of a line of credit assigned to the specific project within this application; 2) signed copies of any grants pertaining specifically to the project within this application.

For insurance program coverage, the applicant by signing the application certifies that:

Applicant, its principals, and any previously owned business is/are not and have never been in default to Monroe County under the terms of any contract. (Default means failure to fulfill contractual obligations where County had to take legal action to obtain remedy or where a bonding company had to make good for applicant.)

16. Construction and Other Contracts:

Applicant, by signing this application, warrants that, if awarded funds for the project, all contracts, for construction or otherwise, to complete the project shall be let in compliance with all applicable laws and County purchasing policy and to comply particularly with the F.S. Chapter 255, chapter 274 and chapter 287. Applicant further agrees to provide TDC/County and their designated representatives with:

- a) access to the project premises for inspection of the progress of the project;
- b) **documentation including copies of all sub-contracts/Request For Bids verifying compliance with purchase/construction/architectural contract requirements of the County [Notice to owner, list of sub-contractors, and release of liens must be provided to County]; and**
- c) access to all records concerning the project. These records must be retained by applicant for a minimum of four (4) years after the termination date of agreement. This requirement may be for a different time period than that required by other government agencies. All records must be kept in accordance with Generally Accepted Accounting Principles.

17. Termination for Default/Convenience:

The TDC/County reserves the right to terminate any contract and agreement if, in its opinion, there shall be a failure at any time, to properly perform faithfully any of the project as funded by TDC/County according to the plan presented with the application, or as modified and accepted in writing by TDC/County.

Further, TDC/County reserves the right to terminate payments under this agreement should the anticipated funding become unavailable for any reason. Should termination occur under this provision, TDC/County shall give applicant thirty (30) days notice prior to termination.

18. Non-discrimination:

During the term of the agreement, applicant shall comply fully with all applicable laws concerning non-discrimination and does, by signing this application, further agree that applicant will not discriminate against any employee, applicant for employment, contractor or other person on the basis of race, color, religion, sex, sexual orientation, gender identification, national origin or physical or mental handicap where the handicap does not affect an individual's ability to perform in a contractual or employment position.

19. Drug-Free Workplace:

Applicant shall maintain a drug-free workplace which complies with the County's policy on same. (Request For Application Page 29)

20. Payments:

Applicant shall submit all documentation required by the County Finance Department in accordance with instructions from said Department, prior to payment of any funds awarded. The TDC Application for Payment forms provided in the TDC reimbursement package shall be used. Ten percent (10%) of every progress payment shall be withheld by County until certification of completion of project.

21. Contractor and Sub-contractor Bonding:

Applicant shall require all contractors and sub-contractors to post such performance bonds as are required by such contractors/sub-contractors entering into contract with the TDC/County.

22. Acknowledgements:

Applicant shall be required to display an appropriate public acknowledgment of the support of the Monroe County Tourist Development Council in a publicly prominent area of the project.

PART II:

Capital Projects Criteria Factsheet

The following Capital Criteria Factsheet must be completed in the affirmative. (Circle those that apply).

1. Does the project involve one of the following:
 - a) acquire
 - b) construct
 - c) extend
 - d) enlarge
 - e) remodel
 - f) repair
 - g) improve

2. Is the project
 - a) publicly owned and operated
 - b) owned and operated by a non-profit organization
 - c) publicly owned and operated by a non-profit organization

3. Is the project one of the following within the boundaries of the taxing district?
- a) convention center
 - b) sports stadium
 - c) sports arena
 - d) coliseum
 - e) fishing pier
 - f) museum
 - g) zoological park
 - h) nature center
 - i) beach or beach park facility
4. If a beach, does the project fall under any of the following:
- a) improvement
 - b) re-nourishment
 - c) restoration
 - d) erosion control
5. If the TDC/County requires a Conservation Easement Deed or mortgage note requiring repayment of TDC monies in the event of transfer of ownership or change in use of the premises, would you be agreeable to executing same? _____
6. Does the applicant request transfer of title or management of a project to the County? _____
- If so, why? _____

PART III:

**Application for
Capital Projects Grant Award**

Submit to:
Office of Purchasing
1100 Simonton Street
Room 2-213
Key West, FL 33040

APPLICATION SUMMARY - ALL PROJECTS

1. **Project Title:**

2. Location or address of Project: _____ *Provide both
physical (postal service) address and legal description (lot, block, subdivision).* _____

Attach Map _____

3. Type of Project:

- _____ convention center
- _____ sports stadium
- _____ sports arena
- _____ coliseum
- _____ auditorium
- _____ fishing pier(s)
- _____ museum
- _____ zoological park
- _____ nature center
- _____ beach or beach park facility

4. There should only be one (1) applicant. The applicant must be a non-profit organization or government agency:

Applicant name _____

& Address: _____

5. Type of Applicant:

_____ non-profit organization _____ government

6. Application is for _____ % of total funds to be obtained from all sources.

7. a) Has applicant received previous TDC assistance: Yes ____ No ____.
If yes, please specify year, amount and nature of project.

b) List any previous grant-in-aid assistance received by the applicant or for the property from any government agency. Indicate year of award, amount, division which awarded the grant, and a brief description of the project assisted by each.

8. For purposes of this application *No more than fifty (50%) percent of matching funds or twenty-five (25%) percent of total project shall be of in-kind services and materials.* TDC requires confirmation in writing that matching funds are in place at the time of this application for grant funds, requiring that a governmental applicant provide one or more of the following: 1. documentation provided by a financial institution of a line of credit assigned to the specific project within this application; 2. signed copies of any grants pertaining specifically to the project within this application. Payment is a 50% reimbursement of the total cost of each segment of the project, subject to the cap on expenditures for that segment as set forth in the agreement. Applicant must be prepared to pay the entire cost of segment in advance of 50%.

a)	TDC funds requested:	Confirmed Matching Hard-Dollar funds (50% limit)	Confirmed Matching In-kind Funds	Total Project Cost
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b) If matching funds, state source of said resources:

(i) Hard-dollar: _____

(ii) In-kind: _____

c) Specify items/services for which TDC monies will be paid if this application is approved. Also specify how much is anticipated to be spent on each item/service. _____

Please refer to paragraph 2 of the Sample Agreement on Request for Application, page 31.

9. In the space below, provide a brief synopsis of the overall project and describe specifically the work to be accomplished with the funds requested.

10. Designated Project Contact/Supervisor:

Name: _____ Title: _____

Daytime Telephone no.: _____ Business Address: _____

Fax: _____ E-mail: _____

The architect or project contact/supervisor is responsible and liable for statements provided in this application.

PART IV:

PROJECT DESCRIPTION

1. Use:

a) Original use of structure and date of construction: _____

b) Modifications to the present date including date & description: _____

c) Present use: _____

d) Any other uses between original and present: _____

e) Proposed use: _____

f) Attach photograph of existing site: _____

g) **Historic designation:** Indicate whether the property has been listed in the National Register, is located in a National Register district, is a locally designated historic landmark or is located in a locally designated historic district. If located within a district, provide the official name of the district. This information is available from the planning agency having jurisdiction over the property. _____

All Capital projects funded by TDC shall be owned and operated by a governmental entity or non-profit organization. Applicant shall provide proof of property ownership or long-term lease for consideration of funding.

2. Ownership or other interest in property by applicant:

a) Official records reference for ownership documentation:

b) If not owned by applicant, provide long-term lease of property

c) If not owned by applicant, provide notarized consent letter from owner for use of property as outlined in this application.

3. If proposed project calls for transfer of title of real property to County, two (2) current real estate appraisals and one (1) environmental assessment shall be provided. The TDC/County shall ascertain, prior to acceptance of any donation or prior to purchase, that the property will pose no environmental hazard, or liability for same, to County. The TDC/County must also ascertain permissible government interest in the transfer of title. Indicate any such proposed title transfers here:

4. *This paragraph applies only to an acquisition funding request, but you will still need to complete items 5 through 13, whether this is new construction or renovations, additions, or exhibits. The purchase amount shall not exceed the value of the property as determined by the average of two appraisals, or the average of the closest two appraisals if more than two are obtained. **NOTE:** The maximum grant amount from tourist development revenue for an acquisition project shall not exceed 50% of the purchase amount. Indicate the area of the property to be acquired in acres.

In evaluating applications for acquisition funding, an important consideration is the appropriateness of the size of the site to be acquired. Determinations of the appropriateness of site size will be made on a case-by-case basis and will depend on the characteristics for which the property is considered to be significant. Sufficient property should be acquired to assure that the historic relationship of a structure or archaeological site to its surrounding environment is preserved. However, it is important that no more property than is necessary to achieve established preservation objectives be included in the acquisition project application. As this factor is crucial to favorable consideration of your grant application and will have substantial impact on the cost of the required application documentation, we encourage prospective applicants to consult with the staff of the TDC Administrative Office prior to initiating the required documentation.

5. **Protection of property:** Indicate any type of state or federal protection currently afforded the property. It may be that more than one type may be applicable. Provide citations for applicable local protective ordinances. Include copies of property-specific restrictive legal instruments in an attachment. By signing and submitting this application/bid, the proposer **warrants** that **all** restrictions are disclosed. Failure to include **every** restriction on the property may result in immediate termination of any agreement and demand for return of any monies paid thereunder.

6. Is the property threatened by imminent destruction, deterioration or other loss which may include demolition, vacancy, severe deterioration, loss of structural integrity, encroaching development, adverse environmental conditions, vandalism, etc.? Be specific regarding the nature of immediacy of the threat. If so, describe in detail:

7. a) Are there any building restrictions on the site? If so, describe. Attach copies of all recorded easement and restrictive covenants. By signing and submitting this application/bid, the proposer **warrants** that **all** restrictions are disclosed. Failure to include **every** restriction on the property may result in immediate termination of any agreement and demand for return of any monies paid thereunder.

b) Is the proposed project compatible with the County's Concurrency Requirements under the existing and proposed Land Use Comprehensive Plan? How have you ascertained such compatibility? (Note: If your description does not provide information about existing permits and/or review by the County Planning Department, your application shall be rejected.)

c) Does the site contain endangered or threatened species of flora or fauna?
_____Yes _____No

If so, describe:

d) Are there facilities existing or planned to accommodate the physically disabled?

Yes___ No___

Describe/Explain :

e) **Public accessibility and use:** Indicate the extent to which the property is or is scheduled to be open to the public each year (hours per day, days per week and weeks per year) upon project completion. Indicate whether or not the property will be accessible to the handicapped per Chapter 553, Part V, Florida Statutes and the Americans with Disabilities Act, Public Law 1012-336. If not, provide a brief explanation. Estimate the number of persons who will use or visit the completed facility annually. For archaeological projects, if the site will not be accessible to the public, estimate the number of persons annually who will be exposed to the interpretive materials and reports resulting from the project. How was this estimate derived?

8. Describe present physical condition of site: (attach legal description per property tax records). Indicate, by checking the appropriate term, the present condition of the property.

Excellent: The property is habitable and occupied; no repairs are needed. All physical evidence indicates that the property is under continuous maintenance. Application is for expansion and enhancement.

Good: The property is habitable and occupied; only cosmetic repairs are needed (e.g., peeling paint, missing ornamental features, some deteriorated mortar, etc.) Property is maintained but in need of minor repair.

Fair: The property is habitable but may be vacant. Both the structural integrity (foundation, framing, etc.) and weather tight integrity of the property (siding, walls, roofing, etc.) are in jeopardy because of prolonged neglect.

Poor: The property is uninhabitable and vacant. Major structural repairs are needed. Weather tight integrity has been lost. The property is derelict, abandoned and not habitable without major rehabilitation work.

Also, list any specific factors or problems which contribute to the present condition of the property.

9. List and describe all major work items included in the proposed project:

10. Status of Project Planning:

_____ Not yet initiated
_____ Initiated
_____ Schematics complete
_____ Design development
_____ Documents complete
_____ Construction documents completed

11. Name and Address of Project Consultant (architect, engineer, Contractor, etc.).

Enclose planning or architectural documents completed to date (1 set).

12. Has a contract for architectural services or constructional services been executed? If so, indicate the scope of services to be provided under this contract and whether these services were obtained through competitive negotiations, requests for bids or other process.

13. Describe the means by which the structure(s) affected by this project will be maintained subsequent to restoration/rehabilitation. Include sources and estimated amounts of funding for such maintenance. It is the County's policy not to fund operations and maintenance costs of organizations notwithstanding any tourism promotional value of a project.

PART V:

PROJECT BUDGET AND TIMETABLE - ALL PROJECTS

1. Cost Estimates: List all major work items and the estimated costs of each. If the project is phased, segregate clearly those costs for the phase to be assisted by the TDC funds requested. All phases and total estimated cost of the entire project must be listed here.

Total cost of phase/project for which funds are requested:

a)Phase _____
b)Project _____

Amount of TDC funds requested: (Funds requested from TDC not to exceed 50% of the total project cost)

a)Phase _____
b)Project _____

2. Confirmation that signed, sealed bid process was utilized for acquiring architectural services, or that project does not require architectural services.

3. Matching Funds. List the sources and amounts of confirmed matching funds. (For items involving personnel, include the number of hours to be spent on the project activities and their per-hour value). These funds must not be expended before execution of a Capital Project Agreement. Prior donated services or expenditures are not acceptable as match for grant funds. No more than fifty (50%) percent of matching funds or twenty-five (25%) percent of the total project shall be in-kind services. Attach copies of commitments. Commitments must be in a form which gives the applicant a legal right to receive the funds, services or materials if the donor is an individual. Notarized letters of commitment will be acceptable only from corporations, associations and partnerships. **TDC requires confirmation in writing that matching funds are committed at the time of this application for grant funds i.e. governmental applicant – provide a line item budget for the project in questions; non-profit organization – provide 1. documentation provided by a financial institution of a line of credit assigned to the specific project within this application; 2. signed copies of any grants pertaining specifically to the project within this application.** Applications that do not include proof of matching funds shall not be processed for consideration of funds. These funds must not be expended before execution of the Capital Project Agreement sought to be entered as a result of this application, should it be determined that capital funding shall be made available under the current RFP process. Prior donated services or expenditures are not acceptable as match for grant funds. Notwithstanding the foregoing limitation, should a third-party governmental entity provide funding of a segment of a multi-phase project for which the applicant has

a) Hard-dollar: (50%) _____

b) In-kind: (25%) _____

Total confirmed matching Hard-dollar funds: _____

Total confirmed matching In-kind funds: _____

Projected in-kind services and goods shall be allocated the following values, subject to negotiation with TDC/County. List here all such anticipated values:

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- This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

- Project Timetable (in months)

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____
- f) _____
- g) _____
- h) _____

- Monroe County Tourist Development Council FY 2007 Capital Project Application*

PART VI:

PROJECT BENEFITS - ALL PROJECTS

1. Is the primary purpose of the project to promote tourism in Monroe County?

2. How will the project promote tourism in Monroe County?

PART VII:

ADDITIONAL INFORMATION - ALL PROJECTS:

1. District in which the project is located. _____

2. Population of city/district where project activity will take place. _____

3. Federal Employer's Identification Number of Applicant's organization. _____

4. Permitting: List all permits required to complete this project. _____

5. Outline of proposed program in which this project will promote tourism in Monroe County. _____

6. Applicant must demonstrate the ability to complete the project as proposed and to maintain and operate the project as a viable and long-term tourist attraction and is open to the public.

Included in this demonstration should be a summary of the applicant's past grant experience, past two (2) year's financial statements, proposed operational budget and description of administrative resources available to applicant and committed to the project. Attached financial statements, budgetary and other documents.

PART VIII:

NON-COLLUSION AFFIDAVIT and VERIFICATION

I, _____, of the city of _____, according to law on my oath, and under penalty of perjury, depose and say that:

1) I am _____, the bidder making the bid for the project described as follows:

2) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

3) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor; and

4) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit, or not to submit, a bid for the purpose of restricting competition;

5) The statements contained in this affidavit are true and correct, and made with full knowledge that Monroe County relies upon the truth of the statements contained in this affidavit in awarding contracts for said project.

VERIFICATION

I HEREBY CERTIFY that I have read the forgoing application and that the facts stated herein are true and correct to the best of my knowledge and belief.

President's Name Typed

President's Signature

Sworn to and subscribed before me this _____ day of _____,
20__

personally appeared _____,
and _____ known to be the persons named in and who executed the foregoing document.

My commission expires: _____ Notary Public State of _____

PART IX
DRUG FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that:

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 (Florida Statutes) or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, or any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Date: _____

Applicant's Signature

PART X:

ATTACHMENTS AND CERTIFICATION - ALL PROJECTS

1. The following supporting documents are attached.

- a) _____ Proof of ownership/consent of owner for use of property as outlined in this application:
 - (i) _____ Official record reference for ownership documentation; or
 - (ii) _____ Consent letter from owner for use of property as outlined in this application
- b) _____ Citations to applicable protective ordinance if applicable
- c) _____ Copy of letter designating project supervisor
- d) _____ Map showing location and boundaries of project area (for all types of projects involving specific site or area which cannot be identified by a street address)
- e) _____ Photographs of existing conditions of project site(s) or area - two sets of originals and 12 photocopies of originals)
- f) _____ Documentation of confirmed matching funds through contracts, executed grants, or other similar complete and executed documents
- g) _____ Annual operating budget upon completion
- h) _____ Plans and specifications, if completed (development projects only – one set)
- i) _____ Criteria Fact Sheet
- j) _____ All restrictive documents governing use of the property
- k) _____ Non-Collusion Affidavit and Verification Form (notarized)
- l) _____ Drug Free Workplace Form

2. I certify that the information contained in this application is true and correct to the best of my knowledge, and that I am the duly authorized representative of the applicant.

Signature: _____

Title: _____

Date: _____

Grant Award Agreement

This AGREEMENT dated the ____ day of _____, 20____, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County" or "GRANTOR," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and _____, hereinafter "Grantee".

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair or improve, convention centers, sports stadiums, sports arenas, coliseums, auditoriums, fishing piers, museums, zoological parks, nature centers, beach improvements and beach park facilities which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Grantee owns and contracts to a not-for-profit corporation for the operation of a _____ open to the public and providing _____; and

WHEREAS, Grantee has applied for funding for the _____ project _____; and

WHEREAS, the Grantor and TDC have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to _____ and _____ the property for use as an _____ and _____ open to the public;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the Grantee and the Grantor have entered into this Agreement on the terms and conditions as set forth below.

1. GRANT AGREEMENT PERIOD. This Agreement is for the period of _____ through to _____. This Agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 and 13 below.

2. SCOPE OF AGREEMENT. The Grantee shall provide the following scope of services: _____ Segment(s) of the work is/are more particularly described in Exhibit(s) A, detailing the work and the cost allocable to each segment, attached hereto and incorporated herein by reference. All work for which grant funds are to be expended must be completed by the stated termination date of _____ and all invoices pertaining to this project shall be submitted to the Finance Department of Monroe County no later than **September 30, 200__** to be considered for payment.

a) There shall be a project manager to acknowledge receipt of goods or work performed. This Project Manager shall be _____. Should there be a change in the project manager specified in the Grantee's application, a

new project manager shall be designated and notice of the designation shall be provided to TDC/County.

b) If, and to the extent that, Grantee contracts for any of the work funded under this Agreement to be performed or completed, Grantee shall give notice to County of the contractual relationship, provide County with a copy of any and all contracts and shall require the contractor(s) to comply with all the terms of this contract. Should grantee contract the work and then decrease the scope of work to be performed by a contractor, Grantee shall provide County with an amended contract executed by Grantee and its contractor.

(i) A Grantee which is a governmental entity shall comply with the procurement regulations and policies to which it is subject, and shall provide Grantor documentation of the procurement requirements applicable to the project and compliance therewith.

(ii) A Grantee which is a not-for-profit entity shall undergo procurement processes for those parts of the project to be contracted (not performed by the entity's employees), which shall, at a minimum, require the acquisition of two written quotes for work expected to be under \$25,000 or a notarized statement as to why such written quotes were not feasible. For work expected to be \$25,000 or more, a competitive bid process must be performed. County procurement policies and procedures may be used by the Grantee as a guideline. In the event that the monetary contractual process commenced prior to the effective date of this funding grant Agreement, and the guidelines above were not followed, Grantee shall submit with its reimbursement request a notarized statement which details the Grantee's procurement efforts to ensure the best service for the most economical price. Grantee shall provide Grantor detailed documentation of the procurement process used.

c) Grantee shall exercise good internal controls to assure that the project as described in the funding application shall be completed on a timely basis within the proposed budget and shall provide to County any certifications, including those by the architect, engineer, contractor or an independent consultant if necessary, required to establish that materials which are purported to be applied to the project are in fact so applied. Further verification shall be required to show that equipment and other fixtures and personal property covered by this Agreement are delivered to and installed in the project site. When any permit is required by any governmental agency, copies of plans and other documents which are submitted to the applicable agency shall be submitted to the County Engineering Division to enable verification that the scope of services under this Agreement has been provided.

3. AMOUNT OF AGREEMENT AND PAYMENT. The Grantor shall provide an amount not to exceed \$_____ for materials and services used to _____ the property. Reimbursement request must show that Grantee has paid in full for materials and services relating to the segment prior to seeking the 50% (fifty percent) reimbursement from Grantor. Payment shall be 50% (fifty percent) reimbursement of the total cost of the segment, subject to the cap on expenditures for that segment as set forth in Exhibit A. Reimbursement can be sought after each segment of the Agreement is completed and signed by the Monroe County Engineering Department as outlined in 3.a. The Board of

County Commissioners and the Tourist Development Council assume no liability to fund this Agreement for an amount in excess of this award. Monroe County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the BOCC.

a) Payment shall be made upon the completion of a specific segment as outlined in the Scope of Services and Exhibit A. Payment for expenditures permissible by law and County policies shall be made through reimbursement to Grantee upon presentation of Application for Payment Summary— AIA Document G702 or similar certification as required below for governmental entities and not-for-profit entities, invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Payment is a 50% (fifty percent) reimbursement of the total cost of each segment of the project, subject to the cap on expenditures for that segment as set forth in Exhibit A. Reimbursement can be sought after each segment of the Agreement is completed and signed by the Monroe County Engineering Department as outlined in 3.a. Included in said documentation shall be proof that the Grantee has received the property, realty or personalty, for each segment of Agreement as outlined in Exhibit A and paid an amount equal to or greater than the amount invoiced to the Grantor. It shall be necessary for the Grantee to contact the County Engineering Division and to arrange for inspections upon the completion of each segment. The documentation needed to support the payment request shall be in the form necessary for submission and available to the County engineer at the time of inspection. All submissions for payment shall have a proposed schedule of values for segment(s) and indicate the percentage of completion of the overall project as of the submission. This document should be signed by the project architect, engineer, general contractor or project manager. Photos of the progress of the work shall also be submitted with the payment application. It shall be the responsibility of the project architect, engineer, general contractor or project manager to initiate the communication with the Monroe County Engineering Division to facilitate the inspection(s) of the segment of the project. All submissions requesting payment shall be approved in writing, and signed, by the Monroe County Engineering Division as to the completion of the segment of the project for which payment is requested. The application for payment document must be certified through a statement signed by an officer of the organization and notarized, declaring that representations in the invoice are true and factual. Grantee shall also provide partial releases of liens or certifications of non-lien if applicable. Grantor shall retain 10% of any payment on work in progress until the Grantee has provided a Final Release of Lien for each vendor/Contractor for whom payment is requested. For projects exceeding \$25,000 in TDC funding under this Agreement, final payment will not be made until the following documents are complete and submitted to the Grantor:

AIA Document	G-702	Application for Payment Summary
AIA Document	G-704	Certificate of Substantial Completion
AIA Document	G-706	Contractor's Affidavit of Debts & Claims
AIA Document	G-706A	Contractor's Affidavit of Release of Liens
AIA Document	G-707	Consent of Surety to Final Payment (when applicable)
Final Release of Lien or Affidavit and Partial Release of Lien		

For projects for which TDC funding under this Agreement is \$25,000 or less, the AIA documentation is not required, but sufficient documentation must be submitted to County to provide similar assurances that the work has been completed and contractors/suppliers paid.

All payment requests must be submitted no later than the completion of project of September 30, 200_. Invoices received after September 30, 200_ will not be considered for payment.

b) Documentation shall be submitted to the TDC Administrative Office to show the receipt and application of in-kind donations of goods, professional services, and materials. Said documentation should include invoices, bills of lading, etc., and be verified as received and applied to the project through a notarized statement of the project architect, engineer, general contractor or project manager. The receipt and application to the project of volunteer labor are to be documented and verified by notarized signature of the project architect, engineer, general contractor or project manager, and said documentation submitted to the TDC Administrative Office. All submissions shall identify the items included in Exhibit A and grantee shall complete the Application for Payment form which is provided within the payment/reimbursement kit provided to the grantee, listing the schedule of values which are sought to be reimbursed and shall indicate the percentage of completion of the overall project as of the submission. This document should be signed by the project architect, engineer, general contractor or project manager.

Photographs showing progress on project shall be included in any payment request. The Project Manager shall certify delivery to the project site and installation therein of any goods or services provided other than through an architect, engineer or contractor. All work performed and goods received on site and incorporated into the project shall be verified by one of the foregoing.

c) Grantee must submit all documentation for final payment on or before the termination date of this grant of September 30, 200_. Invoices received after September 30, 200_ will not be considered for payment.

d) At any time that the documentation requirement policies of Monroe County are revised, such as to require annual inventory reports for equipment purchased under a TDC capital project grant, Grantee shall comply thereafter with such increased requirements, or further funding under the Agreement may be terminated by County.

e) Upon successful completion of this Grant Agreement, the Grantee may retain ownership of the real and personal property acquired and/or improved with funding under this Grant Agreement. However, the Grantee shall maintain, preserve and operate the property which was acquired or improved under this Agreement for the uses and purposes which qualified the Grantee for tourist development tax funding. Grantee shall complete and sign a Property Reporting Form (provided within payment/reimbursement package) for personal property and forward said completed form with the appropriate invoice to the TDC Administrative Office. Real property acquired or improved through funding under this Agreement shall remain dedicated for the purposes set forth herein or for other purposes

which promote tourism and ownership of said property shall be retained by the Grantee. The following terms shall apply:

(i) The Grantee shall have the use of the property, including both realty and personalty acquired with funding under this agreement, at the project site for so long as the facility is operated by Grantee, open to the public, and has a primary purpose of promoting tourism. At such time as any of the conditions in the preceding sentence shall cease to exist, the Grantee shall transfer ownership and possession of equipment and personal property to a local government or another not-for-profit organization which is a facility for which tourist development taxes may be used pursuant to Florida Statute with prior approval from TDC and BOCC.

(ii) At any time that the Grantee: (a) elects to stop the project or otherwise decide not to place into service for tourist-related purposes the facility acquired, constructed, or renovated with tourist development tax funding, (b) demolishes the project facility or divests itself of ownership or possession of the real property, or (c) ceases the use of the property with a primary purpose of promoting tourism, Grantee shall, pursuant to the formula set forth hereafter, refund to the County the Tourist Development funding. This provision shall survive the termination date of all other provisions of this contract for a period of ten years. Should the demolition, transfer of ownership, or change to a non-tourist related purpose occur after the facility has been used for tourist-related purposes for at least three (3) years, the amount of refund shall be pro-rated based on a useful life of ten (10) years.

(iii) The Grantee is responsible for the implementation of adequate maintenance procedures to keep the real and personal property in good operating condition.

(iv) The Grantee is responsible for any loss, damage, or theft of, and any loss, damage or injury caused by the use of, real or personal property or equipment purchased through funding under this Agreement.

4. **RECORDS AND REPORTS.** The Grantee shall keep such records as are necessary to document the performance of the Agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. The Grantee shall also provide such access to the personal property and equipment purchased under this Agreement. It is the responsibility of the Grantee to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. The Grantee understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Grantee will be billed by the Grantor for the amount of the audit exception and shall promptly repay any audit exception.

(a) **Public Access.** The County and Grantee shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Grantee in conjunction with this Agreement; and the County

shall have the right to unilaterally cancel this Agreement upon violation of this provision by Grantee.

5. **MODIFICATIONS AND AMENDMENTS.** Any and all modifications of the terms of this Agreement shall be only amended in writing and approved by the Board of County Commissioners for Monroe County. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Grantee and their respective legal representatives, successors, and assigns.

6. **INDEPENDENT CONTRACTOR.** At all times and for all purposes hereunder, the Grantee is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this Agreement shall be construed as to find the Grantee or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

(a) **No Personal Liability.** No covenant or Agreement contained herein shall be deemed to be a covenant or Agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

7. **COMPLIANCE WITH LAW.** In carrying out its obligations under this Agreement, the Grantee shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this Agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement and shall entitle the Grantor to terminate this Agreement immediately upon delivery of written notice of termination to the Grantee.

8. **RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT.** The Grantee shall include in all Agreements funded under this Agreement the following terms:

a) **Anti-discrimination.** Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) **Anti-kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in contractor. For breach or violation of this warranty, the Contractor shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is

aware that funding for this Agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

c) Hold harmless/indemnification. Contractor acknowledges that this Agreement is funded at least in part by the County and agrees to indemnify and hold harmless the County and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this Agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the Contractor that is related to the activity under this Agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related this Agreement.

d) Insurance. Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to property occurring during the Agreement or thereafter that results from performance by Contractor of the obligations set forth in this Agreement. At all times during the term of this Agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Contractor, the County and the TDC shall be named as additional insured, exempt workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this Agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

e) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

f) Right to Audit. The Contractor shall keep such records as are necessary to document the performance of the Agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies.

9. **HOLD HARMLESS/INDEMNIFICATION.** The Grantee hereby agrees to indemnify and hold harmless the BOCC/TDC and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments arising directly or indirectly under this Agreement. The Grantee shall immediately give notice to the Grantor of any suit, claim or action made against the Grantor that is related to the activity under this Agreement, and will cooperate with the Grantor in the investigation arising as a result of any suit, action or claim related to this Agreement.

(a) **Non-Waiver of Immunity.** Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Grantee in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

(b) **Privileges and Immunities.** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

10. **NONDISCRIMINATION.** County and Grantee agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Grantee agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to

nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

11. **ANTI-KICKBACK.** The Grantee warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the Grantor shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

12. **TERMINATION.** This Agreement shall terminate on September 30, 200_. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this Agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this Agreement pursuant to the terms specified herein, this Agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Grantee. The Grantor may terminate this Agreement without cause upon giving written notice of termination to Applicant. The Grantor shall not be obligated to pay for any services or goods provided by Grantee after Grantee has received written notice of termination.

13. **TERMINATION FOR BREACH.** The Grantor may immediately terminate this Agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by Grantee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Grantor from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. Failure to provide Grantor with certification of use of matching funds or matching in-kind services at or above the rate of request for reimbursement or payment by is a breach of Agreement, for which the Grantor may terminate this Agreement upon giving written notification of termination.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior Agreements with respect to such subject matter between the Grantee and the Grantor.

15. **GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

- (a) Venue. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Grantee agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.
- (b) Mediation. The County and Grantee agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.
- (c) Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Grantee agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- (d) Attorney's Fees and Costs. The County and Grantee agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.
- (e) Adjudication of Disputes or Disagreements. County and Grantee agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.
- (f) Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Grantee agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County

and Grantee specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

16. **ETHICS CLAUSE:** Grantee warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the Grantor may, at its discretion terminate this Agreement without liability and may also, at its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee. The County and Grantee warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Grantee agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(a) **Covenant of No Interest.** County and Grantee covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

(b) **Code of Ethics.** County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

17. **PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an Agreement to provide any goods or services to a public entity, may not submit a bid on a Agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a Agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

18. **AUTHORITY:** Grantee warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Grantee below certifies and warrants that the Grantee's name in this Agreement is the full name as designated in its corporate charter (if a corporation); they

are empowered to act and contract for the Grantee, and this Agreement has been approved by the Board of Directors of Grantee or other appropriate authority.

19. **LICENSING AND PERMITS:** Grantee warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

20. **INSURANCE:** Grantee agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Grantee and the Grantor from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Grantee for such injuries to persons or damage to property occurring during the Agreement or thereafter that results from performance by Grantee of the obligations set forth in this Agreement. At all times during the term of this Agreement and for one year after acceptance of the project, Grantee shall maintain on file with the Grantor a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Grantee, the Grantor and the TDC shall be named as additional insured, except workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

Grantee shall provide, to the County, as satisfactory evidence of the required insurance, including the insurance policy application and either:

- Original Certificate of Insurance
or
- Certified copy of the actual insurance policy
Or
- Certificate of Insurance e-mailed from Insurance Agent/Company to County Risk Management (Telephone Maria Slavik at 295-3178 for details)

An original certificate or a certified copy of any or all insurance policies required by this contract shall be filed with the Clerk of the BOCC prior to the contract being executed by the Clerks office. The Insurance policy must state that the Monroe County BOCC and Monroe County TDC is the Certificate Holder and additional Insured for this contract. Insurance should be mailed to:

**Monroe County Board of County Commissioners
C/O Risk Management
P.O. Box 1026
Key West, FL 33041**

21. NOTICE. Any written notice to be given to either party under this Agreement or related hereto shall be addressed and delivered as follows:

For Grantee:

For Grantor: Lynda Stuart
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040

and

Suzanne Hutton, Asst. County Attorney
P.O. Box 1026
Key West, FL 33041-1026

22. CLAIMS FOR FEDERAL OR STATE AID. Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

23. NON-DELEGATION OF CONSTITUTIONAL OR STATUTORY DUTIES. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

24. **NON-RELIANCE BY NON-PARTIES.** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Grantee agree that neither the County nor the Grantee or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

25. **ATTESTATIONS.** Grantee agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

26. **NO PERSONAL LIABILITY.** No covenant or Agreement contained herein shall be deemed to be a covenant or Agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

27. **FORCE MAJEURE.** The Grantee shall not be liable for delay in performance or failure to complete the project, in whole or in part, due to the occurrence of any contingency beyond its control or the control of its contractors and subcontractors, including war or act of war whether an actual declaration thereof is made or not, act of terrorism impacting travel in the United States, insurrection, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, storm, flood, drought or other act of God, or act of nature (including presence of endangered animal species which cannot be timely removed in a safe manner or any act of any governmental authority which prohibits the project from proceeding as described in the scope of services and incorporated references and which the Grantee has exercised reasonable care in the prevention thereof. However, lack of planning for normal and expected weather conditions for the time of year the project is to be executed shall not constitute an act of God excusing a delay. Any delay or failure due to the causes stated shall not constitute a breach of the Agreement; however, the BOCC shall have the right to determine if there will be any reduction to the amount of funds due to the Grantee after consideration of all relevant facts and circumstances surrounding the delay in performance or failure to complete the project within the contract period. Upon demand of TDC or BOCC, the Grantee must furnish evidence of the causes of such delay or failure. BOCC shall not pay for any goods received or services provided after the date(s) described in paragraph 1 and Scope of Services.

28. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

29. SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

(SEAL)
ATTEST:

By: _____
Secretary

By: _____
President